In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 523

UNION EQUITY COOPERATIVE EXCHANGE, INC.,
ENID, OKLAHOMA,
Petitioner,

VERSUS

OKLAHOMA STATE BOARD OF EQUALIZATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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December, 1961.

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QUESTION PRESENTED

We do not agree with petitioner's statement of the "Question Presented" at page three of its Petition. The State Board of Equalization did not arbitrarily discriminate against petitioner by increasing its assessed valuation on its elevators and other properties as stated by petitioner. The State Board of Equalization cannot equalize assessments as between properties within a county. The Oklahoma statutes contemplate that such equalization be done by the local officials under 68 O.S.A., Sections 15.11 and 15.41 (Appendix I-A and I-B). The State Board has authority only to equalize the assessed valuation of properties as between counties, or as between classes of property

within counties. Section 21, Article 10, Oklahoma Constitution (Appendix "F", petitioner's petition herein) and 68 O.S.A., Section 15.44 (Appendix I-C).

The question presented, in our opinion, should be stated as follows to-wit:

> Should the United States Supreme Court take jurisdiction to review an order of the Oklahoma State Board of Equalization, affirmed by the Supreme Court of Oklahoma, which order on its face appears to increase the assessed valuation of Petitioner's property in excess of the limit fixed by the Oklahoma Constitution, for the purpose of adjusting such assessment, or is Petitioner required to pursue the remedy provided by Oklahoma law by bringing suit in the local court to recover the alleged excessive taxes resulting therefrom?

REASONS FOR NOT GRANTING THE WRIT

The respondent respectfully submits that the writ should not be granted because:

1. The question urged by petitioner was not presented, argued and supported by citation of authority to the Supreme Court of Oklahoma.

It is true the Supreme Court of Oklahoma disposed of the appeal of the petitioner in a memorandum decision wherein such appeal was disposed of by reference to a companion case styled *Board of County Commissioners of Garfield County* v. *State Board of Equalization*, decided June 13, 1961, 363 P.2d 259. The Supreme Court of Oklahoma in its memorandum decision said:

> "The Court finds . . . that the matter has been determined in favor of the State Board of Equalization and against Garfield County . . . in an opinion promulgated June 13, 1961." (See Appendix "A" to Petition for Writ.)

The Supreme Court of Oklahoma in the Garfield County decision said this:

> "There is no material difference between the arguments advanced under plaintiff in error's two propositions for reversal here, and those advanced under the first two propositions the appellant urged for reversal in that case, except here plaintiff in error adds to its second proposition, the assertion that the order '. . . WILL DEPRIVE A TAX-PAYER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.' However, plaintiff in error's brief sets forth no argument nor authority to support said assertion. It therefore presents no ground for reversal. Thrasher v. Board of Governors, Okl., 359 P. 2d 717. All other arguments of plaintiff in error have been rejected as grounds for the order's reversal in Cause No. 39321, supra. The applicable portions of our opinion in that case are therefore adopted, by reference, as our opinion herein."

At Appendix "I", page xxix of the Petition herein, is the original complaint of the petitioner as filed with the State Board of Equalization and it will be noted that the only reference made therein to the question here presented is the flat assertion that petitioner's property will be taken without due process of law.

The rule in this Court pertaining to this matter is stated in *Hulbert* v. *Chicago*, 202 U.S. 275, 26 S. Ct. 617, 618.

> "According to the practice of the court, an error not assigned is not open to review. Berry v. Chicago, 192 Ill. 154, 155, 61 N.E. 498. Errors assigned, but not noticed or relied on in the brief or argument of counsel, will be regarded as waived or abandoned. Keys v. Kimmel, 186 Ill. 109, 114, 57 N.E. 851. And such rule of practice will be recognized by this court. Erie R. Co. v. Purdy, 185 U.S. 148, 153, 46 L. ed. 847, 850, 22 Sup. Ct. Rep. 605."

In other words the petitioner simply alleged before the Board and before the Supreme Court of Oklahoma that its property would be taken without due process of law, yet offered no argument and cited no authorities in support of this position. This caused the Supreme Court of Oklahoma to treat his allegation as abandoned.

2. The petitioner has not exhausted his remedy before local courts of Oklahoma.

The contention urged by respondent herein is that the blanket increase of ten per cent in rural lands in Garfield County will result in the assessment of its property in excess of 35 per cent of the fair market value limitation which is fixed by the Constitution of Oklahoma. (Art. 10, §8 as amended) (Petition, Appendix "F," page xxi.)

The Supreme Court of Oklahoma considered petitioner's case along with fourteen other companion cases. In the case styled, *In the Matter of the Increase in Valuation of the State Board of Equalization of Real Property of Washington County, Oklahoma*, 363 P.2d 269, it was argued that to apply the order of increase in assessed

values to rural lands would result in some tracts being assessed at more than 35 per cent of its fair, cash value and a violation of Art. 10, §8 of the Oklahoma Constitution. The Court at page 271, 363 P.2d, *supra*, stated:

> "* * * We are inclined to believe that excessive revenue stamps were placed on said deeds but if in this we err, and the appealed-from order results in excessive assessments, an aggrieved tax-payer under the facts of this case is privileged to seek relief under 68 O.S. 1951 § 15.50."

This statute (Sec. 15.50) reads as follows:

> "In all cases where the illegality of the tax is alleged to arise by reason of some action from which the law provides no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against the officer for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him, for a period of thirty days, and if within such time summons shall be served upon such officer in a suit for recovery of such taxes, the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the Court having jurisdiction thereof, and they shall have precedence therein. If, upon final determination of any such suit, the Court shall determine that the taxes were illegally collected, as not being due the State, county or subdivision of the county, the Court shall render judgment showing the correct legal amount of taxes due by such person, and shall issue such order in accordance with the Court's findings, and if such order shows that the taxes so paid are in excess

of the legal and correct amount due, the collecting officer shall pay to such person the excess and shall take his receipt therefor."

This section of the statute authorizes a suit for recovery of any alleged excessive taxes paid and petitioner therefore has an adequate remedy if it be correct in its contention as asserted to this Court. It has not pursued that remedy and we submit that it should do so.

3. There are no "special and important reasons" for granting certiorari in this case.

There are no special, important or substantial reasons, as required by Rule 19, for granting certiorari herein because this case involves the assessment of petitioner's property for one year only and the amount of the assessment is not continuing or permanent. As stated by petitioner under Point 5, on page 8 of its petition herein, petitioner has paid its tax under protest and same is being held in suspense by the County Treasurer, and we have demonstrated, under our Point 2 above, that petitioner may, under 68 O.S.A., Section 15.50, bring suit to recover any alleged excessive or over payment of such tax. The result of such an action by petitioner will not affect the rights of any other taxpayer.

Petitioner, or any taxpayer, may each year, list his property with the County Assessor of Garfield County, for assessment at a valuation which he believes proper under 68 O.S.A., Section 15.11 (Appendix I-A). If, in any year, the County Assessor should increase the assessed valuation of such property above that returned, relief may be had by filing a proper complaint with the County Board of Equalization, as provided in 68 O.S.A., Section 15.41

(Appendix I-B). If the taxpayer is not satisfied with the decision of the County Board of Equalization, he is given the right of appeal to the State District Court and there to the State Supreme Court by 68 O.S.A., Section 15.42 (Appendix I-D).

Since, therefore, petitioner's property is assessed for ad valorem taxation for each year separately and the assessment for 1960, the year in question, is not a continuing and permanent assessment, and since petitioner is privileged to seek relief by a suit for refund of any alleged excessive payment of taxes made by it for 1960, there is no special, substantial or important reason for granting certiorari herein under Rule 19.

4. Implicit in the orders of the State Board of Equalization, which were affirmed by the Supreme Court of Oklahoma, is the condition that no property should be increased in value above the thirty-five per cent limitation fixed by the Oklahoma Constitution.

In other words it is an elementary and fundamental rule of law that every public official is presumed to follow the law, and it must be presumed that no County Assessor will increase any property on his rolls beyond the 35 per cent limitation fixed by the Oklahoma Constitution.

In another of the companion cases, *Board of County Commissioners of Canadian County, Oklahoma* v. *State Board of Equalization*, 363 P.2d 242 (See Petition Appendix "C", page iv), the Oklahoma Court discusses the whole problem of increase of valuations in the various counties of the State of Oklahoma.

The petitioner quotes from the case of *Custer County Excise Board* v. *St. Louis-San Francisco Railway Company*, 207 P.2d 774, at page 7 of its petition as follows:

> "Obviously there is no difference between rural property and urban property in its relation to an ad valorem tax or a tax based on values, so that one property may be distinguished from the other as an object of taxation. Location alone is not a basis for the classification of the property for purposes of taxation on a basis of value. Rural and urban property being in the same class as a subject of ad valorem tax, it follows that uniformity requires that all such property within the confines of the county for which an ad valorem tax is levied should be treated alike * * *."

The Oklahoma Court in the Canadian County case (see Petition, Appendix "C," page ix) in dealing with that decision said:

> "The language quoted by appellant from Custer County Excise Board v. St. Louis & S.F. Ry. Co., 201 Okla. 528, 207 P. 2d 774, is not applicable here. There, this Court was obviously referring to 'rate of levy,' rather than to valuation. In Blake v. Young, 128 Okla. 153, 261 P. 923, we held that the uniformity provision in the Oklahoma Constitution's Art. X, sec. 5, which appellant claims the challenged order violates, relates to the rate of taxation, and not to the valuation of property. See, also Cooley on Taxation (4th Ed.) p. 638."

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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December, 1961.

APPENDIX I

I-A Title 68, O.S.A., Sec. 15.11:

"On or before January 1st of each year, the Oklahoma Tax Commission shall prescribe for the use of all county assessors, suitable blank forms for the listing and assessments of all property, both real and personal. Such forms shall contain such information and instructions as may be necessary in order, to obtain a full and complete list of all taxable property, and such forms shall be used uniformly throughout the State.

"It shall be the duty of the Assessor to furnish such forms to any taxpayer upon request, and all personal property shall be listed on such forms in the manner provided therein; and such lists shall be signed and sworn to and filed with the County Assessor not later than March 15th of each year; and such lists may show the description of real property, which may be by subdivision of quarter sections, or less if any such subdivision is owned in less quantity describing such less quantity by United States Land Survey nomenclature if that can be done, otherwise by metes and bounds, according to ownership. *Real Estate need not be listed by the taxpayer, but may be listed by him if he desires, in which case the list shall show the taxpayer's estimate of the value of each tract of land and shall separately show the value of the buildings and improvements thereon.* All such sworn lists of property shall contain such other information concerning both real and personal property as may be required by such forms so prescribed * * *." (Emphasis supplied.)

I-B Title 68, O.S.A., Sec. 15.41:

"In any case where the County Assessor shall increase the valuation of any property above that returned by the taxpayer, or in the case of real estate, increase the valuation

over the assessment for the Preceding year, the Assessor shall notify the person in whose name any such property is listed, giving the amount of such valuation as increased. Such notice may be by mail or delivery to the last known address of such person, or to the person in charge or possession of the property. In any case where the county Board of Equalization shall increase the valuation of any property above the value returned by the taxpayer, or shall add property not listed by the taxpayer, or in the case of real estate increases the valuation over the assessment for the preceding year, the Secretary of the County Board of Equalization shall notify by mail to his last known address, the person in whose name any such property is listed, giving the amount of such valuation as increase. In all cases where notice by mail is required under this Section, the same shall describe the property with sufficient accuracy so as to notify the taxpayer as to the property included, together with the assessed value of the property; and duplicate copies of the notice showing the date of issuance and mailing, shall be kept in the office of the Assessor or the Secretary of the Board, as the case may be which record so kept shall be prima facie evidence as to the fact of the notice having been given as required. The taxpayer shall have ten days from date of the mailing of such notice in which to file, with the Secretary of said Board, a written complaint, specifying his grievances, and the pertinent facts in relation thereto in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. Complaint in like manner may be filed on real estate not increased over the previous year's assessment, provided such complaint is filed on or before the first Monday in May. Complaint in like manner may be filed with the Board by the Taxpayer where the County Assessor shall increase the valuation of any property above that returned, or in the case of real estate, shall increase the valuation over the assessment for the

preceding year. Complaint in like manner may be filed by any taxpayer where, pursuant to the authority contained in Section 15.18 the County Assessor has added property not listed by the taxpayer, provided such complaint is filed on or before the first Monday in May. Upon receipt of such complaint the Board shall fix a date of hearing, at which time said Board shall be authorized and empowered to take evidence pertinent to said complaint; and for that purpose, is authorized to compel the attendance of witnesses and the production of books, records, and papers, by subpoena, and to confirm, correct, or adjust the valuation, as may seem just. In all cases where either the County Assessor or the County Board of Equalization has, without giving the notice required by this Section or by Section 15.18 increase the valuation of property as listed by the taxpayer, if he has knowledge of such adjustment or *eddition*, may at any time prior to the adjournment of the Board, file a complaint in the form and manner above provided for. Thereafter the Board shall fix a date of hearing, notify the taxpayer, and conduct the hearing as required by this Section."

I-C Title 68, O.S.A., Sec. 15.44:

"The Governor, State Auditor, State Treasurer, Secretary of State, Attorney General, State Examiner and Inspector and President of the Board of Agriculture shall constitute the State Board of Equalization, and said State Board of Equalization shall hold a session at the Capitol of the State, commencing on the third Monday in June of each year for the purpose of equalizing the property of the several counties. It shall be the duty of said Board to examine the various county assessments and to equalize, correct and adjust the same as between the counties by increasing or decreasing the aggregate assessed value of the property or any class thereof, in any or all of them, to conform

to the fair cash value thereof as herein defined, and to order and direct the assessment rolls of any county in this State to be so corrected as to adjust and equalize the valuation of the real and personal property of the several counties; provided that no change in the assessed valuation of any county in this State shall be binding until ten days notice of said change shall have been given the Board of County Commissioners of said county and an opportunity given for a hearing on said change."

I-D Title 68, O.S.A., Sec. 15.42:

"Both the taxpayer and the County Assessor shall have the right of appeal from any order of the County Board of Equalization to the District Court of the same County, and right to appeal of either may be either upon questions of law or fact including value, or upon both questions of law and fact. In case of appeal the trial in the District Court shall be de novo, but no matter shall be reviewed by the District Court which was not presented to the Board in the Complaint filed with it.

"Notice of appeal shall be filed with the County Clerk as Secretary of the County Board of Equalization, which appeal shall be filed in the District Court within ten days after the final adjournment of the Board. It shall be the duty of the County Clerk to preserve all complaints and to make a record of all orders of the Board and both the complaint and orders shall be a part of the record in any case appealed to the District Court from the County Board of Equalization.

"Either the taxpayer or the County Assessor may appeal from the District Court to the Supreme Court, as provided for in the Code of Civil Procedure, but no matter shall be reviewed on such appeal which was not presented to the District Court.

"In such appeals to the District Court and to the Supreme Court it shall be the duty of the County Attorney to appear for and represent the County Assessor. It shall be the duty of the Attorney for the Oklahoma Tax Commission to appear in such appeals on behalf of the County Assessor either upon request of the County Attorney for assistance, or upon request of the County Assessor. It shall be the mandatory duty of the Board of County Commissioners and the County Excise Board to provide the necessary funds to enable the County Assessor to pay the costs necessary to be incurred by him perfecting appeals made by him to the Courts.

"In all appeals taken by the County Assessor the presumption shall exist in favor of the correctness of the County Assessor's Valuation and procedure followed by him."